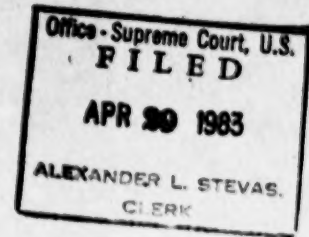


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82-1578

IN THE CIRCUIT COURT OF THE UNITED STATES

OCTOBER TERM, 1982



STATE OF ALABAMA,

Petitioner

vs.

OVERTON DAVID JOHNSON,

Respondent

ARGUMENT AGAINST
PETITION FOR WRIT OF CERTIORARI

OVERTON DAVID JOHNSON
Respondent
P. O. Box 246
Grant, Alabama 35747

MAY 12 PAGE 18

ISSUE

DID NORTH CAROLINA COMPLY WITH ALABAMA EXTRADITION LAW WHEN THE EXTRADITION WAS BASED ON WARRANT WITH NO AFFIDAVIT ATTACHED?

ARGUMENT

David Johnson has not committed any Crime in North Carolina, is poor, in bad health, lost everything he had when East Gadsden Bank closed, does not have monies to defend himself in North Carolina, and when they threaten you with 20 years in prison and you are not rich like Hinkley, there is not much you can do as a poor man but shut-up, take the 2 years plea bargain prison, and hope you can live through it. But if I was rich, I could afford Experts, Hot-Shot Attorneys, pay expenses of the former Executive Vice-President of the East Gadsden Bank to go up and testify as to the truth: that the Bank had agreed to pay the Draft and accept the title to the car when it came through the mail, but that because of mix-up it was returned and it was the Bank's duty under the Agreement to pay and not David (the Executive Vice-President had left the State because of embarrassment of the closing of the Bank and can't be located).

North Carolina failed to comply with the Alabama Extradition Law, which states in substance that no person can be Extradited unless the demand for execution is ... "accompanied by a copy of an Indictment found ... or by a copy of an Affidavit made before a Magistrate there, together with a copy of any Warrant which was issued thereon ... charging person demanded with having committed a Crime under the Law of that State ..." Title 15-9-31, Code of Alabama, (1975). Further, the Supreme Court of the United States held in the case of BATTLES vs. STATE OF ALABAMA, 389 So. 2d., 957 (Ala. Crim. App. 1980), Cert. Den. 389 So. 2d 960 (Ala. 1980), Cert. Den. 452 U.S. 920 (June 1980), that said

Statute, in substance, was valid and was a "Uniform Criminal Extradition Act."

The Alabama Court of Criminal Appeals in David's case found the facts to be as follows:

"At the Trial, the Appellant (David) pointed out to the Trial Court that the supporting papers were not sufficient to support extradition, because the Warrant for Arrest was not based on an adequate or a timely Affidavit ... Section 15-9-31, Code of Alabama, (1975), clearly states that there shall be attached to the Requisition Warrant from the Governor of the Foreign State a certified copy of an Indictment found or by information supported by Affidavit in the State having Jurisdiction of the Crime or by a copy of an Affidavit made before a Magistrate there, together with a copy of any Warrant which was issued thereon.

The Certificate dated December 16, 1980, of Magistrate, Gary L. Childers, is attached to the copy of the Affidavit of Jack P. Labeau dated December 17, 1980, to a copy of a Warrant of Arrest issued by Gary L. Childers on December 2, 1980, and recites that "the foregoing is a true and correct copy of (1) the Warrant issued by me on December 2, 1980, against David Johnson, charging the said subject with the Crime of false pretense and (2) the Affidavit on which the Warrant was issued."

The Warrant of Arrest of the Appellant (David Johnson) was issued on December 2, 1980, by Magistrate, Gary L. Childers, of the State of North Carolina. The Affidavit of Jack P. Labeau was executed on December 17, 1980, before Pauline D. Hawkins, a Magistrate of North Carolina, some 15 days after the warrant was issued."

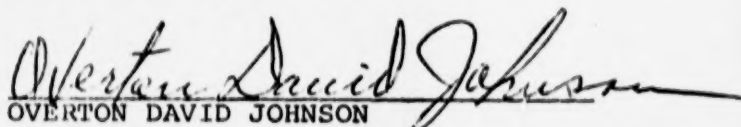
"We hold that the requirements of the Alabama Code (1975), Sec. 15-9-31, have not been complied with, as required by our Statute in this case because the Warrant of Arrest was issued some 15 days before the Affidavit of Jack P. Labeau was made. The Appellant (David Johnson) is not lawfully charged with the Crime of the State of North Carolina. Therefore, a reversal of this cause should be Ordered. BATTLES vs. STATE OF ALABAMA, Ibid."

Alabama and North Carolina now seek to elevate the Issue as to whether an accused in an asylum state has a Constitutional Right to a probable cause Hearing before Extradition. David Johnson has never asserted such a right. Mr. Johnson asks only that North Carolina comply with Alabama Extradition Law. The Law requires, both in Alabama and in North Carolina, in substance, that if Extradition is based on an Affidavit, that a copy of such Affidavit made before

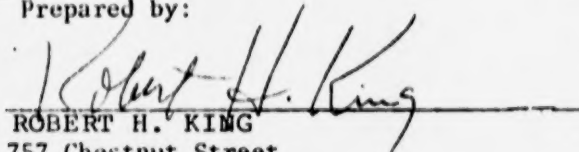
a Magistrate there, together with a copy of any Warrant that was issued therein shall be attached. No such Affidavit was attached to the Warrant issued on December 2, 1980, as was sworn to by Magistrate Childers. If Extradition had been sought on an Indictment, there is no requirement of an Affidavit.

This case presents no Novel Questions and no Constitutional Questions. The Alabama Court of Criminal Appeals was not required to interpret North Carolina Law. Instead, North Carolina is required to comply with Alabama Law. The only issue in this case is whether North Carolina complied with the Alabama Extradition Law and even its own Law. The Answer is clearly "No"..

Respectfully submitted:


OVERTON DAVID JOHNSON

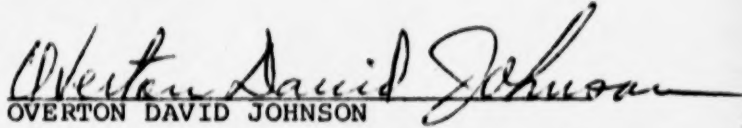
Prepared by:


ROBERT H. KING
757 Chestnut Street
Gadsden, Alabama 35901
(205) 547-2431

CERTIFICATE OF SERVICE

This is to certify that I have this day mailed a copy of the foregoing to Honorable Charles A. Graddick, 250 Administrative Building, 64 North Union Street, Montgomery, Alabama 36101.

This the 26th day of April, 1983.


OVERTON DAVID JOHNSON

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA,
PETITIONER

VS.

OVERTON DAVID JOHNSON,
RESPONDENT

) APPLICATION TO APPEAL IN
) FORMA PAUPERIS
)
)
)

Case No. _____

I, Overton David Johnson, being first duly sworn, deposes and says that I am Respondent in the above entitled cause; that in support of my Motion to proceed without being required to prepay fees, cost or giving security therefor, I state that because of my poverty, I am unable to pay the cost of said proceeding or to give security therefor; that I believe I am entitled to redress:

I further swear that the response which I have made to the questions and instructions below relating to my ability to pay the cost of this cause are true and correct:

1. Are you presently employed? no

2. If the answer to above is "yes", state the place of your employment and the amount of salary and wagers per month which you receive. N/A

3. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or any other source? yes, 1/82-11/82 made \$9700.00, as Truck Driver. Job ended due to bad Health & age. 1/83-3/83 \$12000.00 on odd jobs. Ardy 4/83 - possibly larger

4. Do you own any cash or checking or savings account? no

5. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishing and clothing)?

no

6. List the persons who are dependent upon you for support and state their age and relationship? Lempie B. Johnson, age 59.

years; Sickly, not worked for years

I, Overton David Johnson, understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Overton David Johnson
(OVERTON DAVID JOHNSON)

STATE OF ALABAMA
COUNTY OF ETOWAH

Sworn to and subscribed to before
me on this the 19th day of April,
1983.

Gene M. Elliott
NOTARY PUBLIC

My commission expires: 2 16 185